Doc Code: AP.PRE.REQ

PTO/SB/33 (07-09)
Approved for use through 07/31/2012. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional): 02-292

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on _____

Signature _____

Typed or printed name _____

Application Number	Filed
10/699,425	October 31, 2003
First Named Inventor	
Dianne ELLIS	
Art Unit	**Examiner**
1794	Singh-Pandey, Arti R

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☑ attorney or agent of record.
Registration number 34108

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

/Ramon R. Hoch/
Signature

Ramon R. Hoch
Typed or printed name

(704) 697-5177
Telephone number

August 13, 2009
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Dianne ELLIS et al.	Examiner:	Singh-Pandey, Arti R
Application No.:	10/699,425	Group Art Unit:	1794
Filed:	October 31, 2003	Confirmation No.:	3280
Docket No.:	02-292		

For: ANTI-MICROBIAL NONWOVEN WIPE

ARGUMENTS IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

August 13, 2009

Sir:

These Arguments are in response to the Final Office Action dated July 22, 2009, and accompanies a Pre-Appeal Brief Request For Review (form PTO/SB/33).

A Notice of Appeal and appeal fee are being filed concurrently herewith.

Background of the Review

The appellants respectfully submit that the Examiner's final rejection of claims 4 and 5-22 is clearly in error based on the facts of record and request its review by a pre-appeal brief conference panel prior to the necessity of the preparation of an appeal brief by the appellants to seek review of the Examiner's final rejection of these claims.

The Present Invention:

The present invention, as recited in claim 4, is directed to:

a nonwoven anti-microbial wipe comprising:

a fibrous nonwoven substrate, which is coated with

a non-ionic and cationic binder mixture, and subsequently coated with

a cationic dual quaternary ammonia anti-microbial agent, and

the anti-microbial agent is readily released upon introduction to a water source.

Claim 19 is similar to claim 4 and further recites the fibrous nonwoven substrate is three-dimensionally imaged and includes a scrim layer reducing the extensibility of the nonwoven substrate. Claim 21 is similar to claim 4 and further recites an additional layer selected from the group consisting of a fabric layer and a film layer.

As recited in claims 4, 19, and 21, these combined chemical and structural features, where a cationic dual quaternary ammonia anti-microbial agent is structurally coated on top of a separately coated non-ionic and cationic binder mixture, can interact in an unexpected manner such that the cationic dual quaternary ammonia anti-microbial agent is readily released when the wipe is introduced to a water source.

As the non-ionic and cationic binders have low affinity or an opposite electrical charge, respectively, to the cationic anti-microbial agent, the resulting wipe of the present claims readily releases the disinfectant into a water source, and will not attract and retain a charged disinfectant (which would be expected to impair the effectiveness of the sanitizing solution). Therefore, the nonwoven wipe of the present invention is designed for single-use, rapid disinfectant release capability, unlike some prior multiple use/rinse wipes designed for controlled disinfectant release.

The Examiner's Final Rejection:

Claims 4 and 5-22 have been finally rejected by the Examiner under 35 USC §103(a) as being obvious over Graubart et al. (U.S. Pat. No. 5,522,942) in view of Rivera et al. (U.S. Pat. No. 7,013,541).

Identification Of Missing Essential Element(s) Required To Establish A Prima Facie Rejection And Other Clear Factual Errors in the Rejection(s)

The factual record shows that the Graubart et al. and Rivera et al. references relied upon by the Examiner in making the final rejection clearly fail to teach, suggest or predict a nonwoven antimicrobial wipe including all the above-discussed features recited in present claims 4, 19, and 21, in view of the following presently claimed features that are missing from the references.

1. *"A nonwoven wipe comprising ... a fibrous nonwoven substrate"*

Graubart et al. is missing the presently claimed feature of a nonwoven wipe comprising a fibrous nonwoven substrate.

The Examiner asserts that Graubart et al. discloses a wipe that is a nonwoven in stating "Graubart et al. disclose wipes for cleaning hard surfaces ... Graubart et al. do not disclose the structural and chemical makeup of the nonwoven itself of the additional layers" (Final Office Action, pages 3, 4). This finding of the Examiner is inaccurate.

None of the terms "wipe", "nonwoven", "cloth", or "fabric" or the like appear anywhere in Graubart et al. This should not be surprising as Graubart et al.'s stated invention is a "synergistic cleaning composition" in the form of an aqueous solution and a method for cleaning hard surfaces with the cleaning solution (Title, Abstract, Claims). The present invention is a nonwoven wipe, not a cleaning solution.

In fact, Graubart et al. teach their cleaning solution is useful with a sponge. In Example II at column 8 of Graubart et al., a "sponge" is used in a Gardner Washability Apparatus to measure cleaning efficacy of a cleaning solution according to an embodiment of Graubart et al.'s invention. A sponge is not a nonwoven fibrous substrate. Further, Graubart et al. does not bind the cleaning solution to the sponge. Therefore, Graubart et al.'s cleaning solution is used with an entirely different carrier structure and release mechanism than the present claims.

2. *"a non-ionic and cationic binder mixture"*

Graubart et al. also is missing the presently claimed feature of a nonionic and cationic binder mixture.

The Examiner notes that Graubart et al. show the inclusion of a glycol ether solvent in the cleaning composition and is "equating the glycol ether solvent as the cationic portion of the mixture required by the current set of claims" (Final Office Action, page 3).

The Examiner's equating of the glycol ether solvent of Graubart's cleaning solution with

the "cationic portion of the mixture required by the claims" is flawed because a solvent, by definition, is a dispersant and not a "binder mixture" as required in the present claims. A solvent as shown by Graubart et al. is the opposite of a binder. The required glycol ether solvent ingredient of the cleaning solution of Graubart et al. diverges from the use of a binder in the nonwoven wipe of the present claims, and, therefore, *teaches away* from the present invention. *In re Gurley*, 27 F.3d 551, 553, 31 USPQ2d 1130, 1131 (Fed. Cir. 1994). Further, the inclusion of a binder in the cleaning solution of Graubart et al. would be expected to interfere with the solvent action and render the resulting solution unsatisfactory for its intended purpose, and thus such a modification would not have been obvious. *Tec Air Inc. v. Denso Mfg. Michigan Inc.*, 192 F3d 1353, 1360, 52 USPQ2d 1294, 1298 (Fed. Cir. 1999); *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fe. Cir. 1984). In addition, Formulation 1 and Comparative Formulation 1 disclosed in the Examples section of Graubart et al., columns 7-8, also do not disclose any ingredient that is a binder, nor a cationic binder, nor a non-ionic/cationic binder mixture.

Further, glycol ether solvent is not a "cationic" charged chemical compound, and thus cannot qualify as a *cationic* binder as required in the present claims. As explained by Graubart et al., the glycol ether solvent has the structure R_9–O–R_{10}–OH where R_9 is an alkoxy of 1 to 20 carbon atoms or aryloxy of at least 6 carbon atoms, and R_{10} is an ether condensate or propylene glycol and/or ethylene glycol having from one to ten glycol monomer units, such as diethylene glycol n-butyl ether having the formula: $C_4H_9OCH_2CH_2OCH_2CH_2OH$ (column 5, lines 30-53). The glycol ether solvent of Graubart et al. clearly is not charged, nor cationic charged, nor is it a binder.

In addition, Graubart does not apply the cleaning solution including glycol ether solvent to a nonwoven fibrous wipe.

The secondary reference to Rivera et al. fails to compensate for the above-indicated deficiencies of Graubart et al.

Rivera et al. fails to show any cationic binder component incorporated into a nonwoven fabric for any reason, and also fails to show any quaternary ammonia anti-microbial agent incorporated into a nonwoven fabric for any reason, and further fails to predict the outcome of combining such a missing cationic binder as a precoated binder on the nonwoven with the missing overcoat of cationic dual quaternary ammonia anti-microbial agent. Rivera et al. also does not teach or suggest the nonwoven fabric is a substitute for a sponge.

"When evaluating claims for obviousness under 35 U.S.C. 103, all the limitations of the claims must be considered and given weight ... *Ex parte Grasselli*, 231 USPQ 393 (Bd. App. 1983) *aff'd mem.* 738 F.2d 453 (Fed. Cir. 1984)". M.P.E.P. § 2143.03 II.

There is no apparent reason identified by the Examiner for why one of ordinary skill in the art would have considered modifying Graubart et al.'s cleaning solution and sponge to replace the sponge with a nonwoven fibrous substrate *and* also add a nonionic/cationic binder mixture coating before applying the cleaning solution of Graubart et al., nor that such a hypothetical combination would yield a predictable result. Such an apparent reason is not provided by Graubart et al. or Rivera et al., nor has the Examiner "articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007)(quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

In view of the above factual errors in the final rejection, Graubart et al. alone or with Rivera et al., does not support a *prima facie* case of obviousness against present claims 4, 19, and 21, and any dependent claims therefrom. Therefore, the final rejection of claims 4 and 15-22 should be withdrawn and the application allowed on those claims.

In addition to the above arguments, the appellants retain the right to assert other arguments, legal and/or factual, in response to the final rejection of claims 4 and 15-22, if this application remains under appeal or is reopened upon completion of the panel review and decision.

Respectfully submitted,

/Ramon R. Hoch/
Ramon R. Hoch, Reg. #34108

Direct Correspondence To:
Customer Number 62753

Valerie Calloway, Esq.
Polymer Group, Inc.
9335 Harris Corners Parkway, Suite 300
Charlotte, North Carolina 28269
(704) 697-5177